DIRECTOR OF MILITARY PROSECUTIONS

Report for the period
1 January to 31 December 2015

Department of Defence

Director of Military Prosecutions

Report for the period
1 January to 31 December 2015

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Senator the Hon Marise Payne
Minister for Defence
Parliament House
CANBERRA ACT 2600

Dear Minister,

As Director of Military Prosecutions I submit the report herewith as required by section 196B of the *Defence Force Discipline Act 1982,* covering the period from 1 January to 31 December 2015.

Yours sincerely,

JA Woodward
Brigadier
Director of Military Prosecutions
Australian Defence Force

14 July 2016

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ANNEX A PROSECUTION POLICY

ANNEX B CLASS OF OFFENCE BY SERVICE

TABLE OF ABBREVIATIONS USED IN REPORT

ABBREVIATIONS	DESCRIPTION
AACP	Australian Association of Crown Prosecutors
ADF	Australian Defence Force
ADFIS	Australian Defence Force Investigative Service
DDCS	Director of Defence Counsel Services
DFDA	Defence Force Discipline Act 1982
DFDAT	Defence Force Discipline Appeal Tribunal
DFM	Defence Force magistrate
DMP	Director of Military Prosecutions
DPP	Director of Public Prosecutions
GCM	General Court Martial
MJCC	Military Justice Coordination Committee
NCO	Non Commissioned Officer
ODMP	Office of the Director of Military Prosecutions
RCM	Restricted Court Martial
RMJ	Registrar of Military Justice
SPILO	Service Police Investigations Liaison Officer

DIRECTOR OF MILITARY PROSECUTIONS

AUSTRALIAN DEFENCE FORCE

REPORT FOR THE PERIOD 1 JANUARY TO 31 DECEMBER 2015

PREAMBLE

1. Section 196B of the *Defence Force Discipline Act 1982* (Cth) (DFDA) obliges the Director of Military Prosecutions of the Australian Defence Force (DMP), as soon as practicable after 31 December each year, to prepare and give to the Minister for Defence, for presentation to the Parliament, a report relating to the operations of the DMP for that year. The report must:

a. set out such statistical information as the DMP considers appropriate; and
b. include a copy of each direction given or guideline provided under subsection 188GE(1) during the year to which the report relates, and a copy of each such direction or guideline as in force at the end of the year.

2. This report is for the 12 month period to 31 December 2015.

3. The position of DMP was established by s 188G of the (DFDA), and commenced on 12 June 2006. The office holder must be a legal practitioner of not less than five years experience, and be a member of the Permanent Navy, Regular Army or Permanent Air Force, or a member of the Reserves rendering full-time service, holding a rank not lower than Commodore, Brigadier or Air Commodore.[1]

4. Former appointments to the position of DMP have been:

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[1] DFDA s 188GG

a. Brigadier Lynette McDade (July 2006 – July 2013)
b. Brigadier Michael Griffin AM (August 2013 – January 2015)
c. Group Captain John Harris SC – Acting DMP - (January 2015 – June 2015)

5. On 30 June 2015, the then Minister for Defence appointed me as the DMP for a period of five years. My current appointment is until 30 June 2020. Consequently, I was the DMP for six months of this reporting period.

6. The functions of the DMP are prescribed by the DFDA and may be summarised as follows:

a. to carry on prosecutions for service offences in proceedings before a court martial or defence Force magistrate;
b. to seek the consent of the Director of Public Prosecutions as required by s 63;
c. to make statements or give information to particular persons or to the public relating to the exercise of powers under the DFDA;
d. to represent the service chiefs in proceedings before the Defence Force Discipline Appeal Tribunal (DFDAT);
e. to do anything incidental or conducive to the performance of any of these functions;
f. to perform such other functions as are prescribed by the regulations.

7. At the commencement of the reporting period, the office had established positions for 12 prosecutors (ranging in rank from Army Captain (E) to Brigadier (E)), a senior non-commissioned officer performing the duties of a Service Police Investigations Liaison Officer (SPILO), and six civilian support staff.

8. Actual staffing levels at the end of 2015 are shown below.

Position	Rank	Status
DMP	Brigadier	Filled
DDMP	Colonel (E)	Filled
Senior Prosecutor	Wing Commander	Filled
Senior Prosecutor	Lieutenant Colonel	Filled
Office Manager	Executive Level 1	Filled
Prosecutor	Lieutenant Commander	Filled
Prosecutor	Lieutenant Commander	Filled
Prosecutor	Major	Filled
Prosecutor	Major	Filled
Prosecutor	Major	Filled
Prosecutor	Squadron Leader	Filled
Prosecutor	Squadron Leader	Vacant
Prosecutor	Flight Lieutenant	Filled
Prosecutor U/T	Lieutenant	Vacant
Service Police Investigation Liaison	Warrant Officer Class 2 (E)	Filled

Executive Assistant	APS 5	Filled
Paralegal	APS 5	Filled
Paralegal	APS 5	Vacant
Paralegal	APS 4	Filled
Paralegal	APS 4	Filled

9. Throughout the reporting period, staffing levels fluctuated markedly as prosecutors were either deployed on operations at the request of their parent Service, attending professional prosecutorial on the job training or on approved leave inclusive of medical leave and long service leave. Furthermore, as Group Captain Harris was acting as the DMP for six months of the reporting period, the office managed without a permanently posted Deputy Director. Lieutenant Colonel Richard Cawte acted as the Deputy Director during that period. It is appropriate to acknowledge the significant contribution made by Group Captain Harris and Lieutenant Colonel Cawte to managing the office and overseeing the conduct of prosecutions during the period where there was no substantively appointed DMP.

DEPLOYMENTS

10. At the commencement of the reporting period, one prosecutor had already deployed on OPERATION OKRA for a period of 6 months. That position was carried as a vacancy until that prosecutor's return. In November 2015 one prosecutor deployed on OPERATION OKRA and in December 2015 a further prosecutor deployed on OPERATION ACCORDIAN. Those positions continue to be carried as vacancies. An additional prosecutor has recently deployed on OPERATION ACCORDIAN.

11. Although the loss of personnel for deployment and professional training represents a considerable deficit of manpower in a comparatively small organisation, I am mindful that my office has a responsibility to share the burden of the deployed liability for ADF legal officers. I also recognise that legal deployments are essential in order to build the operational and professional experience of ADF legal officers. In future, I will carefully consult with the Services regarding deployment opportunities for legal officers posted to my office, principally to achieve a sustainable sequence that avoids more than one legal officer being deployed at a time. I will also be seeking support from the Services for backfill options including through the use of ADF reserve legal officers whenever possible.

ADMINISTRATIVE SUPPORT

12. Over the initial part of the reporting period two APS positions were vacant. The shortfall in staffing had a significant impact on the essential administrative support that would normally be provided to prosecutors and contributed to the delay in matters proceeding to trial. During the second half of the reporting period one of those vacancies was filled. I have undertaken a restructure of the administrative staff that will better meet the needs of the prosecutors. That restructure will come into effect in the next reporting period and steps will be taken to recruit to the restructured positions.

PROSECUTION POLICY

13. The primary function of the DMP is to conduct prosecutions for service offences in proceedings before courts martial or Defence Force magistrates.[2] The factors to be considered in deciding whether to charge a person with a service offence are articulated in the prosecution policy at Annex A. Upon my appointment, I revised and updated the

[2] Section 188G (1)(a) DFDA

policy, having had the benefit of consideration of the policies of the Commonwealth, State and Territory Directors of Public Prosecutions, in addition to the prosecution policies of other armed forces, with a particular emphasis on updating the disclosure provisions.

14. To promote transparency and to raise awareness of these factors and the related topics included in the policy, the policy is published via the Defence Restricted Network, is being distributed as a hard copy booklet and is available on the internet.

15. During the reporting period, no undertakings have been given to any person pursuant to section 188GD of the DFDA (relating to the power to grant immunity from prosecution); nor have any directions or guidelines been given in relation to the prosecution of service offences to investigating officers or prosecutors pursuant to section 188GE of the DFDA.

STATISTICS

16. Statistics for trials conducted under the DFDA during the reporting period are set out at Annex B to this report.

EXTERNAL ASSOCIATIONS

17. During the reporting period and in accordance with section 188GQ of the DFDA, all legal officers at ODMP either held or obtained an ACT Practising Certificate, and completed the mandatory legal ethics training provided to all Defence legal officers.

18. Since 2007, ODMP prosecutors have been admitted as members of the Australian Association of Crown Prosecutors (AACP). The AACP is comprised of Crown or State prosecutors from every Australian jurisdiction and some jurisdictions in the Pacific region.

19. The Office is an organisational member of the International Association of Prosecutors.

INTERNAL (DEPARTMENT OF DEFENCE) LIAISON

20. During the reporting period, I reported to the Minister, the Chief of the Defence Force and the Service Chiefs. The reports contained information for the reporting period on new briefs of evidence referred to ODMP, the outcomes of briefs closed, the number of trials before Defence Force magistrates (DFM's), restricted courts martial (RCM) and general courts martial (GCM), referrals to the Registrar of Military Justice (RMJ) and included statistics giving a general overview of matters referred to the DMP.

21. The Military Justice Coordination Committee (MJCC) met periodically during the year. This committee was created in response to the Street Fisher recommendation that a committee be formed to oversee and coordinate DFDA action items and facilitate future efficiencies across the principle responsible DFDA agencies. The Committee has provided an effective forum to initiate amendments to the DFDA. At the end of the reporting period high level consideration was being given to a restructuring of the committee so that it was more policy focussed.

22. During the reporting period, ODMP supported the continuation training provided by ADFIS to its investigators. Working together with the ADFIS legal officer, training was delivered covering the construction of briefs of evidence and on the most recent developments in military and civilian law. These sessions were an important professional development tool for the ADFIS investigators. This support is seen as an invaluable tool to maintain the professional relationship that currently exists and builds a strong professional relationship with new investigators. I regard the relationship between ADFIS, service police and ODMP as crucial in ensuring the efficient and effective disposal of service discipline matters.

23. During the reporting period, members of my office have continued to consult with commanders across the three Services.

24. I am cognisant that while my office and the execution of my duties under the DFDA are statutorily independent, the prosecution function is exercised on behalf of command and for the vital purpose of maintaining service discipline. Visits to commanding officers and their bases have been valuable and instructive. They have allowed me to keep in touch with the issues that concern command. My goal is to ensure that the business processes of ODMP support command and the efficient maintenance of service discipline and I will continue to engage with commanders at unit and formation level in order to deepen my understanding of relevant issues affecting command.

25. Prior to assuming ‘command’, the single Services require officers to complete their individual pre-command courses. Each pre-command course has a military justice component delivered by staff from the Military Law Centre (MLC). Staff from my office provided considerable support to these courses during the reporting period. I consider this training support a vital link in engaging with commanders and providing them with greater understanding about the operations of my office.

TRAINING OF PROSECUTORS

26. During the reporting period, all new prosecutors were provided with one-on-one instruction and in-house training. Courses completed by prosecutors during the reporting period included mandatory ADF Legal Training Modules as well as general service courses including the pre-requisite promotion courses.

27. In conjunction with continuing legal education subjects provided by the ACT Law Society, a range of training was also provided in-house by prosecutors and other subject matter experts. This training assisted

prosecutors to meet their mandatory continuing legal education requirements.

CASELOAD

28. During the reporting period, 43 DFM hearings, 3 RCM and 1 GCM were conducted. Fifty nine matters were not proceeded with due to the determination that there was no reasonable prospect of conviction, or that to prosecute would not have enhanced or enforced service discipline. Twenty three matters were referred back to units for summary disposal. Two matters were referred to civilian Directors of Public Prosecution pursuant to the extant Memorandum of Understanding (MOU).

29. A further matter was referred to the ACT Director of Public Prosecutions for consideration as to whether to proceed to prosecution. In relation to that matter, in May 2015, ADFIS commenced an investigation into an allegation of an act of indecency committed by an officer. As soon as the allegations were made and interviewed by ADFIS, the member applied to resign from the Defence Force and his Service Chief accepted his resignation, without being aware of the ongoing investigation.

30. While s 96(6) of the DFDA, allows the prosecution of this member up until a period of six months has elapsed from his separation from the ADF, if it involves an alleged offence that would attract a maximum penalty of more that 2 years imprisonment, the powers of punishment on a member who has ceased to be a member of the ADF are extremely limited. An offence involving an allegation of an act of indecency attracts a maximum punishment of 7 years imprisonment.

31. Provision is made for the punishments that may be imposed by a court martial or DFM in Schedule 2 of the DFDA. In a case of a person, who is not a member of the Defence Force, the only punishments that are available are imprisonment or a fine of an amount not exceeding 15

penalty units. At the time that the alleged offence was committed, the maximum punishment was a fine of $500. That maximum fine was inserted in the legislation when it was enacted in 1982, when such an amount would have been a substantial deterrent. Amendment was made to that provision of the DFDA on 30 June 2015 to increase that fine to 15 penalty units.

32. I considered that the pre-30 June 2015 punishment was inadequate having regard to the gravity of the alleged offending in this case. Consequently, I determined the only proper course to take in this matter considering all the relevant factors, was to refer the matter to the civil authorities for prosecution. As a result of this matter, steps have been taken for ADFIS to advise the relevant authorities when a member is under investigation for a serious alleged offence to facilitate this factor and potential prosecution to be included in consideration as to whether a Service will permit voluntary separation.

33. As at 31 December 2015, ODMP had 77 open matters.

PROCESS

34. Throughout the reporting period, I continued, with the support of service police (ADFIS), the Registrar of Military Justice (RMJ) and the Director of Defence Counsel Services (DDCS), to examine and implement strategies for the best practice management of files to promote a more efficient process to reduce unnecessary delay.

35. In particular, a mechanism for the prompt and efficient provision of electronic briefs of evidence when a member is charged to the member's nominated defending officer. It was anticipated that the provision of an electronic brief of evidence to a defending officer reduces time delays and resource usage, increases efficiency and is environmentally friendly. However, what became apparent was that electronic briefs meant that on a number of occasions,

particularly in relation to large briefs with multiple co-offenders, relevant documents, witness statements and potential exhibits were overlooked. The Provost Marshal ADF and his staff are working together with my office to manage an appropriate way forward for the provision of briefs of evidence.

SIGNIFICANT CASES DURING THE REPORTING PERIOD

Aggravated robbery

36. Two aggravated robbery matters were listed for a hearing by GCM commencing on 16 November 2015. Two private soldiers were charged with a number of offences relating to an aggravated robbery of the Australian Defence Credit Union branch at RAAF Richmond and a conspiracy to commit a further aggravated robbery.

37. The matter did not proceed to trial on 16 November 2015, because a number of pre-trial applications were made by each of the accused, including one relating to whether the court martial had sufficient jurisdiction to try the charges. Those applications were dealt with by the Chief Judge Advocate, MAJGEN Westwood, in the week commencing 16 November. After hearing submissions from all counsel, on 18 November 2015, the Chief Judge Advocate ruled that there was an insufficient service connection in relation to the offence of conspiracy to commit an aggravated robbery.

38. After considering the Chief Judge Advocates reasons for decision, and given that I considered the criminality involved in that charge, being the conspiracy to commit an aggravated robbery, demonstrated an escalation in the level of violence and planning, I formed the view that all the charges relating to the alleged offending should be dealt with together. Accordingly, I withdrew the remaining charges, and had the matter referred to the New South Wales civilian authorities, for potential prosecution by the New South

Wales Director of Public Prosecutions. As I finalise this report, I note that both soldiers have been charged by the NSW Police.

HMAS *Tobruk* matter

39. A RCM heard a matter in February and March 2015 where the charges arose after the majority of survival and safety equipment in HMAS *Tobruk* was found to be unserviceable in February 2013. At that stage, and since July 2011, the accused had been the member responsible for the equipment. He did have one assigned assistant, an able seaman, for that period. The able seaman had been allowed to discharge and was outside the jurisdiction by the time the charges were ready to be laid.

40. It was undisputed, even at trial, that the safety equipment had not been maintained to an appropriate standard. Despite this, an accurate definition of the relevant standards could not be made out at trial. No clear general orders were available that would have supported a charge of failure to comply with a general order under DFDA s 29 and the evidence of various witnesses experienced in the field varied in their interpretation of maintenance standards for the safety equipment.

41. There were clearly systemic issues involved in this matter. The evidence revealed that maintenance of safety equipment is a perennial challenge for most Navy ships because it is very resource intensive. At the relevant time, there was a general shortage across Navy for safety equipment, due to the high cost of its maintenance and poor logistics management. HMAS *Tobruk* was an old ship pending decommissioning, so it was not a high priority for scarce resources.

42. It was also apparent from the evidence that neither the CO and XO, nor the accused's other immediate supervisors, had fulfilled their supervisory roles in the management of safety equipment. Furthermore, the annual

external auditing process had not occurred for several years. Therefore, the usual ‘checks and balances’ that may have identified the issue sooner did not occur.

43. The able seaman, as a Safety Equipment maintainer, was new to the position and he was therefore reliant on the accused for guidance. There was, however, no applicable orders that allowed charges for the poor management of subordinates.

44. The matter was initially referred to ADFIS but promptly returned to the unit Naval Police Coxswains (NPCs) for investigation. This was despite the fact that the CO and XO (the NPC’s direct supervisors) were potential suspects.

45. The unit investigation was initially focused on identifying and rectifying the safety issues rather than disciplinary action, as the ship was unable to proceed to sea until these were rectified. As a result, there were insufficient records taken to be able to attribute blame to individuals for the majority of the shortcomings concerning the maintenance of the safety equipment. Gaps in the continuity of evidence in the ensuing delay further damaged the prosecution case.

46. The matter was referred to ODMP seven months after the incident came to light. The ad hoc investigation and staffing changes at both the investigator and prosecutor level meant that the requests for further evidence and information took a further 14 months to resolve.

47. Without applicable general orders, the charges focused on DFDA s 35 - negligent performance of duty, for the few aspects of wrongdoing that could be attributed to the accused personally. The burden of proof for this offence is very high, because it applies the *Criminal Code Act 1995 (Cth)* definition of negligence rather than the much lower standard of negligence that the offence originally contemplated when the DFDA was enacted. This occurred

after the harmonisation of the DFDA with the provisions of the Criminal Code. As a result of this and practical evidentiary challenges associated with the investigation, after a lengthy trial the accused was acquitted on all seven charges.

48. As part of the prosecutorial decision-making process, my predecessor consulted with Navy regarding the service interest in this matter. That consultation highlighted the significant systemic safety and safety management issues apparent in the evidence and suggested that an administrative inquiry might be warranted with any discipline action to either follow or to proceed concurrently. In response, the then Commander Australian Fleet indicated that an administrative inquiry would not be established into the matter and that appropriate steps had been taken to prevent re-occurrence of the safety issues. Commander Australian Fleet also considered that in this case the discipline process was being used appropriately to hold personnel to account. Notwithstanding this view, my opinion is that the difficulties encountered in the matter suggest that the administrative inquiry process was warranted and would have served as a more appropriate basis for personnel decision-making.

Acts of Indecency

49. With the development of technology, and with a particular emphasis on the fact that most ADF members have Smartphones, there has been a concomitant increase in offending involving quieter and more surreptitious ways of indecently invading a person’s privacy, often without the person knowing. The prosecution of such offences, as acts of indecency, has been difficult in the military context because of a series of rulings by Defence Force magistrates that an act of indecency cannot be committed in the presence of, or on a person, if the person is not aware of the offending.

50. Amendments to the Crimes Act in 2015 introduced specific offences that are intended to protect ADF members against voyeuristic behaviour and anti-social and indecent invasions of their privacy. The first prosecution under that amended legislation will occur early in 2016.

Appeals to the Defence Force Discipline Appeals Tribunal (DFDAT)

51. Four matters were heard before the DFDAT in 2015 and in relation to all the matters, the appeals were upheld.

Thompson v Chief of Navy [2015] ADFDAT 1

52. Able Seaman Thompson appeared before a GCM in Sydney, together with three other members of the Navy, in September 2014. At the commencement of the GCM, on 15 September 2014, Able Seaman Thompson pleaded not guilty to six charges on the charge sheet that were relevant to him. On 22 September 2014, he changed his pleas in relation to charges one, two and seven and maintained peas of not guilty in relation to charges three, four and five, pursuant to an agreement with the prosecutor under which those guilty pleas were accepted "*in full satisfaction of the charges in the charge sheet.*"

53. The circumstances relating to his change of pleas were relevant considerations for the appeal. After the GCM adjourned on 19 September 2014, the prosecutor proposed that prosecuting and defence counsel should meet as a result of a plea proposal that the defending officer had put to the prosecutor prior to 19 September. The prosecutor told defence counsel that the then DMP had considered the defence proposal and said that if Able Seaman Thompson was prepared to plead guilty to charges one, two and seven on the basis that he was knowingly concerned in the offending of another and was not a principal offender, the pleas would be accepted by the prosecution in full satisfaction of the charges appearing in the charge sheet.

The charges would be withdrawn from the GCM and would proceed before a DFM for sentencing. Charge 2 would be particularised in a way that favoured Able Seaman Thompson and the prosecution would not suggest to the DFM that imprisonment was an appropriate sentencing option. The agreement was conditional on the parties settling on a statement of agreed facts to be presented to the court.

54. One other co-offender also pleaded guilty to three charges on the charge sheet and both he and Able Seaman Thompson were subsequently convicted of charges to which they had pleaded guilty. The trial before the GCM continued in relation to the other two co-offenders.

55. On 28 October 2014, after the GCM had acquitted the two remaining accused on all charges, argument took place, before the Judge Advocate, as to the appropriate forum for the sentencing of Able Seaman Thompson and his co-accused. One possibility was that the GCM, before which they had pleaded guilty, should proceed to sentence them. Defence counsel were anxious to avoid this possibility because the panel had heard evidence, in the course of the trial of the two accused who had been acquitted, which may have adversely affected the panel's appreciation of the culpability of the two members who had pleaded guilty. As a result, counsel for the two convicted men argued that the judge advocate should direct the RMJ to dissolve the GCM under DFDA s 125(3) "in the interests of justice", with a view to the RMJ convening another court martial to deal with sentencing. For reasons published the following day, the judge advocate acceded to the accuseds' request and foreshadowed giving a direction to the RMJ to dissolve the GCM.

56. Once the direction had been given, but before the RMJ had acted on it, Able Seaman Thompson's defending officer sought to persuade the RMJ to refer the sentencing task to a DFM. The RMJ advised counsel that she did not

propose to adopt this course because, in her view, DFDA s 125(6) required her to convene another court martial.

57. Able Seaman Thompson appealed his convictions on the basis that they were a consequence of the pleas of guilty being entered on the basis of a misunderstanding as to the consequences. He argued that his pleas were entered on the basis he would be sentenced by a DFM rather than by a GCM, which has considerably greater powers of punishment than a DFM. The DFDAT found that a plea bargain based on incorrect construction of the DFDA resulted in miscarriage of justice. The appeal was allowed and retrial ordered.

58. The other convicted Service member, Able Seaman Angre, has lodged an appeal to the DFDAT on similar grounds. That matter is expected to be heard in the first half of 2016.

59. The DFDAT decision in *Thompson v Chief of Navy* is published at: <http://www.austlii.edu.au/au/cases/cth/ADFDAT/2015/1.html>.

Jordan v Chief of Air Force [2015] ADFDAT 2

60. The most prevalent offence prosecuted by this office relates to rental allowance fraud. The majority of the cases involve circumstances where an ADF member signs a lease on premises with the initial intention of living there as a single occupant. In such circumstances, an entitled ADF member receives the full rate of applicable rental allowance. Then, at some point during the course of the lease, the member allows a person or persons to move into the premises but fails to notify of a change of circumstances by which they originally became entitled to the full rate of rental allowance. In the majority of circumstances, the ADF member is receiving a share of the rent from the person or persons who have moved into the premises. When an ADF member shares premises with another person, an entitled

member will only receive rental allowance at a lesser shared rate on the basis that they would only pay half the rent.

61. There were two cases considered by the DFDAT during 2015 in relation to rental allowance fraud. The first of such cases was *Jordan v Chief of Air Force,* a decision handed down on 29 July 2015. The point of that appeal was that at the suggestion of the DFM, charges were framed on the basis that the accused had engaged in positive conduct, namely completing a request for rental allowance form indicating he would be the sole occupant of rental premises thereby entitling him to rental allowance at the rate applicable to sole occupants. The member completed the form some months before the circumstances which disqualified him from receipt of the allowance at that rate arose. In short, he co-habited with his girlfriend while claiming that he was the sole occupant.

62. The appellant argued that this conduct ought to have been properly charged by alleging that he engaged in conduct by omitting to advise of his change of circumstances, which he is obliged to under the Defence Determination 15/2005. The DFDAT determined that such conduct must be pleaded as an omission, and not as positive conduct. While the DFDAT decision is useful, prosecution of rental allowance fraud will continue to be difficult.

63. The decision of the High Court in *Commonwealth DPP v Poniatowska* (2011) HCA 43 determined that under the law of the Commonwealth, an omission to perform an act cannot be a physical element of an offence unless the law creating the offence makes it so, expressly or impliedly, in the manner provided by section 4.3 of the Criminal Code. The law creating an offence may impliedly provide that the omission to perform an act, which under the law there is a duty to perform, is a physical element of the offence. Service tribunals have found that a section 58B determination is a law of the Commonwealth. However, the provision in the section 58B determination specifying an ADF member's

obligation to advise of a change of circumstances needs to be exceptionally clear if it is to be relied upon as an omission to act giving rise to an offence.

64. The provision invariably relied upon for the prosecution of rental allowance fraud is paragraph 1.5.2 of Defence Determination 15/2005. That paragraph states:

Change in Member's Circumstances

1. Members are responsible for keeping themselves informed about their entitlements.
2. This clause applies if a member or their dependants meet both these conditions.
   a. They have qualified for an entitlement.
   b. There is a change in the circumstances by which they qualified.
3. The member must tell their Commanding Officer about the change as soon as practicable.
   Note: This requirement helps the Commonwealth prevent overpayments being made.
4. The member must also inform the approving authority for any housing assistance that the member is in receipt of about the change as soon as practicable.
5. A member must fill in and provide the relevant form at Annex 1.5.A to their Commanding Officer as soon as practicable after any of these events.

65. It would greatly assist the prosecution of these matters if the notification provisions were revised so as to state that a member has a particular timeframe to advise of the change of circumstances, rather than the term, "as soon as practicable". Given the myriad of options available to ADF members to make such a communication including notification via Defence or personal email, mobile telephone, text message etc it does not seem unreasonable to have a specified timeframe. In my view, a strict approach to the obligation of ADF members to notify changes of circumstances and promote frankness and honesty with

respect to the provision of information relevant to their eligibility for rental allowance entitlements is necessary and entirely reasonable given the significant sums of money involved and the difficulty in detecting and prosecuting contraventions of this obligation.

66. As previously noted, representations have been made to the Director of Entitlements to also consider reviewing this highly important paragraph of the Defence Determination.

67. The DFDAT decision in *Jordan v Chief of Air Force* is published: <http://www.austlii.edu.au/au/cases/cth/ADFDAT/2015/2.html>.

Hodge v Chief of Navy [2015] ADFDAT 4

68. The second rental allowance fraud matter considered by the DFDAT was *Hodge v Chief of Navy*. This case was an appeal from conviction by DFM on a charge of obtain financial advantage by deception contrary to section 134.2 of the *Criminal Code (Cth)*.

69. Able Seaman Hodge rented a residence in the Darwin area with effect 27 February 2014. He applied for and was granted rental allowance at the sole occupant rate. In early March 2014, Able Seaman Hodge allowed his sister and brother in law to reside at the property. He foreshadowed the possibility of them staying at the property with the real estate agent prior to execution of the lease and completed the paperwork for that to occur. The sister and brother in law remained at the property for a number of months. They did not pay any rent. During this time, Able Seaman Hodge continued to receive rental allowance at the sole occupant rate. He did not notify DHA of the presence of his sister and brother in law until they had been at the premises for 70 days. On notifying DHA of their presence, he noted that they were not paying rent and he was not subletting his home to them.

70. On considering the factual circumstances, the DFDAT concluded that there was a reasonable doubt as to whether the appellant practised a deception (noting that there was a real possibility that he did not know that the sister and brother in law would be sharing (as defined by PACMAN)), and whether he obtained the advantage dishonestly (as there was a real possibility that he did not know that the sister and brother in law would remain longer than 28 days, and/or believed that there presence would not affect his entitlement so long as they did not pay rent.

71. The DFDAT found that the conviction was unsafe and unsatisfactory, allowed the appeal and quashed the conviction.

72. The decision again highlights the difficulties associated with the drafting of the Defence Determination and the associated PACMAN and the interpretation of its provisions by members of the ADF. Some defence counsel raise defences based on the interpretation of the Determination that appear, particularly from records of interview, never to have been contemplated by the ADF member. If the provisions were clearer and more streamlined, it would be easier for ADF members to interpret them and it would reduce the number of fraud cases that need to be prosecuted.

73. The DFDAT decision in *Hodge v Chief of Navy* is published at : <http://www.austlii.edu.au/au/cases/cth/ADFDAT/2015/4.html>.

Jesser v Chief of Air Force [2015] ADFDAT 3

74. On 19 November 2014, following a trial before a DFM Leading Aircraftwoman Jesser was convicted of an offence against DFDA s 61(3) constituted by threatening to cause grievous bodily harm, contrary to s 31 of the *Crimes Act 1900* (ACT) (Crimes Act). The sentence imposed was dismissal from the ADF.

75. The facts of the case were that on 14 January 2014, Leading Aircraftwoman Jesser asked to see a Dr Smith urgently. When she saw him, she said that she was experiencing "*a lot of interpersonal stress with [her] chain of command in her workplac*e", that she "*felt like … she was being bullie*d" and "*dominated by her chain of command"* and that she "*was sick of this"*. While, according to Dr Smith, Leading Aircraftwoman Jesser had said these things to him on previous occasions, she went on to say, in a calm manner, that she "*was going to kill … Gardner"*—something which Dr Smith "*had never heard her say … before".* Dr Smith then asked her whether she really did wish to harm Flight Lieutenant Gardner, to which she responded that she *"absolutely did"*. He asked her whether she had a plan, and it was at that point that she said that she was going to pick up a letter opener on Gardner's desk, stab her in the neck with it, "*and watch the bitch bleed".* According to Leading Aircraftwoman Jesser, however, she only said that she "*was going to stab … Gardner in the neck."*

76. The sole ground of appeal was that the conviction was unreasonable having regard to the evidence. Consideration of that ground necessarily entailed consideration of the true meaning of, in particular, s 31(b)(ii) of the Crimes Act and its application in the circumstances of this case.

77. That section reads (relevantly):

> *A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out, to kill that other or a third person shall be guilty of an offence …*

78. The Crimes Act also contains s 30 which creates a related but more serious version of the offence for which s 31 provides, in that the threat specified is not to inflict grievous bodily harm but rather to kill. Apart from these distinctions, the language of ss 30 and 31 is identical.

79. The DFM, in making the finding of guilt on the charges, followed a long line of decisions in the Australian Capital Territory, concerning this provision and a similarly worded section relating to threat to kill: *Doyle v Ranse* (1991) 103 FLR 419 at 423 per Higgins J, *Luu v Cook* (2008) 185 A Crim R 403 at 406-407 [18] per Penfold J, and *McEwan v Rohan* (2012) 274 FLR 103 at 112-113 [39]-[44] per Burns J, and said that they "*will … apply equally to section 31*."

80. The DFM observed that "*the notional fear*" (an expression used by Higgins J in *Doyle* at 423) must relate to *"the threat to stab … Gardner in the neck*". The DFM was satisfied, after hearing the evidence of Dr Smith, that these words "*were not uttered in the context of a hypothetical question of whether a certain end would be achieved if … Jesser were to make the threat concerned*". The DFM also noted that Dr Smith was aware of the need to distinguish between *"a disaffected member wanting to … blow off steam and the indicia that might support a conclusion that a threat was being made in earnest".* The DFM was satisfied that Leading Aircraftwoman Jesser's words constituted a "threat", as understood in s 31.

81. The only element of the alleged offence which, Leading Aircraftwoman Jesser submitted had not been proved beyond a reasonable doubt was whether the threat was made "*in circumstances in which a reasonable person would fear that the threat would be carried out"*: s 31(b)(ii).The DFDAT observed that the question whether the conviction was unreasonable turned on that element alone.

82. The DFDAT made some general observations as to the status of judgments of the ACT Supreme Court from the point of view of DFMs and judge advocates directing courts-martial, that is, whether they are binding or persuasive. Their Honours found that decisions of the ACT Supreme Court were persuasive rather than binding on Service tribunals. Their Honours also said, at [20], that the DFM was "*correct*

to look to McEwan v Rohan and earlier ACT authority for guidance" and, in the absence of any binding authority, "*had little choice other than to follow that authority.*" Their Honours then said that having done so "may well explain the resultant conviction".

83. The DFDAT agreed with Burns J's observation in *McEwan* that the word "belief" does not appear anywhere in s 30 (nor does it appear in s 31), but their Honours also said, at [25], that "a comparison between the ordinary meaning of the word 'fear' and that of the word, 'belief' has come to influence the meaning given to the word 'fear' in s 30 and, thus, by analogy, s 31."

84. The DFDAT said that Burns J "*paraphrase[d] the language of [s 31] and then … appl[ied] what it underst[ood] that paraphrase to mean*". At 112 [41], his Honour referred to the definition of the noun "fear" in the Macquarie Dictionary, and, at 112 [42], by reference to that definition, said that the word carries the meaning "*be afraid of".*

85. The DFDAT said amongst other things,

> *Nor … is it likely that, as used in that section, "fear" was intended*
> *to carry a meaning at the lower end of the range of emotions that, as a general term, "fear" can embrace in modern English usage. Rather, the"fear" entailed must be that sense of dread which carries with it "alarm, terror or fright".*

86. The DFDAT went on to say that the element of fear in s 31(b)(ii) requires "*a threat of harm to whom would be calculated to create terror or fright in the victim*." The DFDAT also observed that there were *"other indications within s 31(b)(ii) of the gravity of the offence"*. First, the fear "*must be measured by the standard of a reasonable person*" which "*serves to exclude fear which might be engendered in a person who is of unusual sensitivity or perhaps paranoid*". Secondly, the use of the word "would" twice in that provision

"*is another means by which a threat admitting of nothing more than the possibility of the specified fear is excluded from criminal consequence*." Thirdly, the "*circumstances"* of which the hypothetical reasonable person would be aware would include having knowledge of "*the relationship between the protagonists*" and "*knowing the material facts".*

87. The DFDAT ultimately found that when all of these factors are taken into account and the true meaning of the s 31(b)(ii) element appreciated, especially what is entailed in "fear" and "would", that it was not open for the DFM to conclude beyond reasonable doubt that a reasonable person in the circumstances would fear that the threat would be carried out. This was because the DFM applied the statements about this element made in *McEwan v Rohan* a decision of the ACT Supreme Court.

88. This decision effectively means that decisions of the ACT Supreme Court, although applying ACT laws imported into the DFDA as Territory offences, are not binding on Service tribunals.

89. The DFDAT decision in *Jesser v Chief of Air Force* is published at: <http://www.austlii.edu.au/au/cases/cth/ADFDAT/2015/3.html>.

OTHER MATTERS

Investigative provisions of the DFDA

90. For many years, it has been apparent to the personnel administering disciplinary arrangements in the ADF that the investigative provisions of the DFDA are in urgent need of review in order to equip ADF investigators appropriately to respond to the challenges of twenty first century offending. Regrettably, however, there have been no significant changes made to these provisions since the enactment of the DFDA in 1982. The investigative provisions of the DFDA were lifted from the *Criminal Investigation Bill*

1977, and based on the Australian Law Reform Commission Report 2 - *Criminal Investigation* – published in November 1975. Consequently, the investigative provisions of the DFDA are over 40 years old.

91. Together with the difficulties of obtaining information because of the amendments to the *Privacy Act 1988* and other legislation such as the *Telecommunications (Interception and Access) Act 1979*, ADFIS investigators are precluded from obtaining much material relevant to their briefs of evidence.

92. Furthermore, as ADFIS is not able to issue search warrants for the production of material from civilian entities such as banks, airlines, real estate agents, and even from Toll Transitions in respect of information relevant to relocations arrangements for ADF members provided under contract with Defence, it may mean that in the future, all fraud offences committed by ADF members have to be investigated and prosecuted outside the ADF. I understand Defence Legal is examining this issue.

The Role of the Superior Authorities

93. Section 5A of the DFDA permits 'superior authorities', to represent the interests of the Defence Force, in relation to charges that are being considered by me for trial. The CDF and Service Chiefs have appointed a number of superior officers of one and two star rank. The superior officer construct is unique. Its purpose is to provide a mechanism whereby command can make representations to me essentially on matters which would equate to 'public interest' considerations for prosecutions in a civilian criminal court. None of the State or Territory Directors of Public Prosecutions has a similar mechanism for the provision of advice on matters of public interest.

94. I am of the opinion that such service interest input must be a fundamental element of my decision as to whether to prosecute a matter. It is one of a number of

mechanisms through which command can be engaged in the discipline process and reinforce command expectations about the values, cultural and professional standards expected of members of the ADF.

95. For these reasons, I urge superior authorities to give careful consideration to their responses to service interest requests. In many cases, the input is fruitful. However, I also find that my requests for service input is often forwarded to command or formation legal officers for development of the response. In my view, this actually defeats the purpose of my request for service interest input as I do not require a legal perspective.

96. I also take the view that because I am statutorily independent, I am able to receive any and all command input. To that end, I have refined my request for service interest input to encourage responses that canvass a greater spectrum of considerations, and will continue this process of refinement in order to maintain my awareness of the priorities and issues facing commanders and broader Defence and in so doing, promote the aims of the DFDA through my prosecutorial decisions.

97. I will also endeavour to meet with superior authorities with a view to emphasising the importance of the service interest mechanism and to encourage their engagement in the discipline system.

Complainants

98. The positive management of complainants and victims of Service offences has continued during the year, including close consultation with more vulnerable complainants, particularly in matters of sexual offending. Where appropriate, arrangements were made for close family members or support officers to attend and provide support directly to complainants during pre-trial preparations and hearings. All of the prosecutors were instructed and

encouraged to liaise closely with all witnesses, especially complainants.

Mental Health Issues

99. It has become more common in Defence for accused to report mental health issues either at the time of investigation and/or charging. This in turn requires consideration of the mental impairment provisions set out in the DFDA. While some of those alleged offenders are not genuine in their complaints of mental impairment, a considerable number are.

100. Section 145 of the DFDA sets out the mental impairment provisions. The section provides that where an accused is found to suffer from unsoundness of mind, in that they are unable to understand the proceedings against him or her and accordingly is unfit to stand trial, then the Defence Magistrate / Court Martial shall direct that the accused be detained in strict custody at the pleasure of the Governor General. It follows that an accused who is unfit to stand trial faces the prospect of detention for an uncertain period of time.

101. Further, section 145 provides that where an accused is found to have suffered a mental impairment at the time of the offence such that they could not form the requisite intent then they must be acquitted and detained in strict custody at the pleasure of the Governor General.

102. From the records available to me, I understand that since the DFDA commenced, the section has not been utilised. I expect that the prospect of indefinite detention is a distinct disincentive.

103. In practice, where a defending officer raises issues of mental impairment, I seek medical reports which specifically address the requirements of section 145. In instances where I am satisfied, on the basis of medical reports that the accused suffers a mental impairment such that section 145

is enlivened, I will usually decide not to proceed with charges due to the disproportionate consequences of a finding by the court that the accused is unsound of mind. In these instances I note that this does not exclude the possibility of the chain of command initiating administrative action against the member including administrative action on medical grounds.

104. In my view review of the legislation would be desirable in order to achieve closer alignment with comparable civilian processes. For example, in some jurisdictions there are separate sentencing regimes directed towards rehabilitation / mental health treatment as opposed to a punitive detention regime. Such reform might mean defence members who suffer from mental impairment (either at the time of the offence or at the time of trial) can avail themselves of a claim of mental impairment and in turn a more appropriate sentencing regime directed toward their mental health requirements.

FINANCE

105. ODMP was adequately financed during the reporting period and has complied with the *Public Governance, Performance and Accountability Act 2013 (Cth)*, and all relevant financial management policies of the ADF.

INFORMATION COMMUNICATION TECHNOLOGY (ICT) FUNCTION

106. This office continues to experience a significant deficiency in ICT function. This is a matter that has been previously reported by my predecessors. This deficiency has caused a diminution of the capability of this office because of a continued requirement to rectify the problems through the Defence Restricted Network helpdesk. I am advised that the problem is unlikely to be rectified while the office is at a location remote from other defence establishments.

107. While my predecessors chose to be at a remote locality in the centre of Canberra located near the civilian courts in an attempt to assert independence, I am of the view that co-location at a Defence establishment will do nothing to diminish my independence. I am endeavouring to take steps to have the office moved.

108. An additional difficulty with the current location is that there is no access to the Defence Secret Network and no proper capability for the storage of classified material. This has presented a number of challenges during the reporting period.

CONCLUSION

109. It is important that the discipline system does not become isolated from command. I will continue working with commanders of all levels across the three Services to improve understanding of the DFDA and pursue the maintenance of discipline by increasing communication and seeking new ways to enhance engagement with matters coming before superior service tribunals.

COMPLIANCE INDEX OF REQUIRED INFORMATION FOR STATUTORY AUTHORITIES

(Senate Hansard, 11 November 1982, pp. 2261- 2262)

Enabling Legislation	*Defence Force Discipline Act 1982*
Responsible Minister	Minister for Defence
Powers, Functions & Objectives	Paragraphs: 1, 3-6
Membership and Staff	Paragraphs: 7-12
Information Officer	Miss Kerryn Dawson Executive Assistant to DMP Office of the Director of Military Prosecutions Department of Defence Level 3, 13 London Circuit CANBERRA ACT 2600 Telephone: 02 6127 4403 Facsimile: 02 6127 4444
Financial Statement	Paragraph: 105
Activities and Reports	Paragraphs: 12-104
Operational Problems	Paragraphs: 106-108
Subsidiaries	Not applicable

Online version of the report is available at
http://www.defence.gov.au/publications/DMP_Annual_Report_2015.pdf

OFFICE OF THE DIRECTOR OF MILITARY PROSECUTIONS

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DIRECTOR OF MILITARY PROSECUTIONS PROSECUTION POLICY

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INTRODUCTION

This policy replaces the Director of Military Prosecution's (DMP) previous policy of 5 September 2013.

The policy applies to all prosecutors posted to the Office of the Director of Military Prosecutions (ODMP), any legal officer to whom DMP has delegated function(s) under *Defence Force Discipline Act 1982* (DFDA) s 188GR and any ADF legal officer who has been briefed to advise DMP or to represent DMP in a prosecution before a Defence Force magistrate (DFM), a restricted court martial (RCM) or a general court martial (GCM), or to represent DMP in the Defence Force Discipline Appeal Tribunal (DFDAT) or another court.

In order to promote consistency between Commonwealth prosecution authorities, some aspects of this policy are modelled on relevant Commonwealth policies.

This publication of policy and guidelines will be periodically updated to ensure that it continues to incorporate changes to the law and Defence policy. The aims of this policy are to:

a. provide guidance for prosecutors to assist in ensuring the quality and consistency of their recommendations and decisions; and

b. to inform other ADF members and the public of the principles which guide decisions made by the DMP.

Members of the ADF are subject to the DFDA in addition to the ordinary criminal law of the Commonwealth, States and Territories. Decisions in respect of the prosecution of offences can arise at various stages and encompass the initial decision whether or not to prosecute, the decision as to what charges should be laid and whether a prosecution should be continued.

The initial decision of whether or not to prosecute is the most significant step in the prosecution process. It is therefore important that the decision to prosecute (or not) be made fairly and for appropriate reasons. It is also important that care is taken in the selection of the charges that are to be laid. In short, decisions made in respect of the prosecution of service offences under the DFDA must be capable of withstanding scrutiny. Finally, it is in the interests of all that decisions in respect of DFDA prosecutions are made expeditiously.

The purpose of a prosecution under the DFDA is not to obtain a conviction; it is to lay before a service tribunal what the prosecution considers to be credible evidence relevant to what is alleged to be a service offence. A prosecutor represents the service community: as Deane J has observed, he or she must *"act with fairness and detachment and always with the objectives of establishing the whole truth in accordance with the procedures and standards which the law requires to be observed and of helping to ensure that the accused's trial is a fair one"*.

Although the role of the prosecutor excludes any notion of winning or losing, the prosecutor is entitled to present the prosecution's case firmly, fearlessly and vigorously, with, it has been said *"an ingrained sense of the dignity, the seriousness and the justness of judicial proceedings".*

This policy is not intended to cover every conceivable situation which may be encountered during the prosecution process. Prosecutors must seek to resolve a wide range of issues with judgment, sensitivity and common sense. It is neither practicable nor desirable too closely to fetter the prosecutor's discretion as to the manner in which the dictates of justice and fairness may best be served in every case.

1. THE DECISION TO PROSECUTE

1.1 Factors governing the decision to prosecute

The prosecution process normally commences with a suspicion, an allegation or a confession. However, not every suspicion, allegation or confession will automatically result in a prosecution. The fundamental question is whether or not the public interest requires that a particular matter be prosecuted. In respect of prosecutions under the DFDA, the public interest is defined primarily in terms of the requirement to maintain a high standard of discipline in the ADF.

The criteria for exercising the discretion to prosecute cannot be reduced to a mathematical formula. Indeed, the breadth of factors to be considered in exercising the discretion reinforces the importance of judgement and the need to tailor general principles to individual cases.

The decision to prosecute can be understood as a two-stage process. First, does the evidence offer reasonable prospects of conviction? If so, is it in the service interest to proceed with a prosecution taking into account the effect of any decision to prosecute on the maintenance of discipline in the ADF.

1.2 Admissible evidence and reasonable prospect of conviction

The initial consideration will be the adequacy of the evidence and whether or not the admissible evidence available is capable of establishing each element of the offence. A prosecution should not be instituted or continued unless there is reliable evidence, duly admissible before a service tribunal, that a service offence has been committed by the person accused. This consideration is not confined to a technical appraisal of whether the evidence is sufficient to constitute a prima facie case. The evidence must provide reasonable prospects of a conviction.

The decision as to whether there is a reasonable prospect of a conviction requires an evaluation of how strong the case is likely to be when presented in Court. It must take into account such matters as the availability, competence and credibility of witnesses and their likely impression on the arbiter of fact. The prosecutor should also have regard to any lines of defence which are plainly open to or have been indicated by the accused, and any other factors which are properly to be taken into account and could affect the likelihood of a conviction.

The factors which need to be considered will depend upon the circumstances of each individual case. Without purporting to be exhaustive they may include the following:

a. Are the witnesses available and competent to give evidence?

b. Do the witnesses appear to be honest and reliable?

c. Do any of the witnesses appear to be exaggerating, defective in memory, unfavourable or friendly towards the accused, or otherwise unreliable?

d. Do any of the witnesses have a motive for being less than candid or to lie?

e. Are there any matters which may properly form the basis for an attack upon the credibility of a witness?

f. What impressions are the witnesses likely to make in court, and how is each likely to cope with cross-examination?

g. If there is any conflict between witnesses, does it go beyond what might be expected; does it give rise to any suspicion that one or both versions may have been concocted; or conversely are the versions so identical that collusion should be suspected?

h. Are there any grounds for believing that relevant evidence is likely to be excluded as legally inadmissible or as a result of some recognised judicial discretion?

i. Where the case is largely dependent upon admissions made by the accused, are there grounds for suspecting that they may be unreliable given the surrounding circumstances?

i. If identity is likely to be an issue, is the evidence that it was the accused who committed the offence sufficiently cogent and reliable?

j. Where more than one accused are to be tried together, is there sufficient evidence to prove the case against each of them?

If the assessment leads to the conclusion that there are reasonable prospects of a conviction, consideration must then be given as to whether it is in the service interest that the prosecution should proceed.

1.3 Maintenance of discipline/Service Interest

It is critical that the ADF establish and maintain the high standard of discipline that is necessary for it to conduct successful operations. As the ADF may be required to operate at short notice in a conflict situation, a common and high standard of discipline must be maintained at all times. Discipline is achieved and maintained by many means, including leadership, training and the use of administrative sanctions. Prosecution of charges under the DFDA is a particularly important means of maintaining discipline in the ADF. Indeed, the primary purpose of the disciplinary provisions of the DFDA is to assist in the establishment and maintenance of a high level of service discipline.

The High Court of Australia, through a number of decisions, has explained the limits of the ADF discipline jurisdiction. Specifically, the High Court has decided that service offences should only be prosecuted where such proceedings can be reasonably regarded as substantially serving the purpose of maintaining or enforcing service discipline.

In many cases the requirement to maintain service discipline will be reason enough to justify a decision to lay charges under the DFDA. However, occasionally wider public interest considerations, beyond those relating to the maintenance of discipline in the ADF, will warrant civil criminal charges being laid.

Although it is a matter for the DMP to determine when the prosecution of a matter will substantially serve the purpose of maintaining service discipline, the DFDA provides at s 5A for the appointment of superior authorities to represent the interests of the service in relation to matters referred to the DMP. Where charges are being considered by the DMP, the DMP will usually canvass the views of the relevant superior authority in writing. Such a request will outline the alleged offending and detail the proposed charges. For the purpose of DFDA section 5A, relevant ADF interests may include:

a. unit operational or exercise commitments which may affect the timing of any trial of the charges;

b. issues concerning the availability of the accused person and/or witnesses due to operational, exercise or other commitments;

c. any severe time constraints or resource implications;

d. wider morale implications within a command and the wider ADF;

e. potential operational security disclosure issues;

f. the anticipation of media interest;

g. the prior conduct of the accused person, including findings of any administrative inquiries concerning the accused person's conduct; and

h. whether or not there is a need to send a message of deterrence, both to the accused person (specific deterrence) and to other members of the ADF (general deterrence).

It would not be appropriate for a Superior Authority to express views on whether particular charges should be laid or the legal merits of the case. Issues of maintaining discipline and Service interests will vary in each particular case but may include the following.

a. **Operational requirements.** Only in the most exceptional cases will operational requirements justify a decision not to lay or proceed with a charge under the DFDA. In particular, the existence of a situation of active service will not, by itself, justify a decision not to charge or proceed with a charge under the DFDA. In most cases, operational considerations will only result in delay in dealing with charges. Operational requirements may, however, be relevant in deciding to which level of service tribunal charges should be referred.

b. **Prior conduct.** The existence of prior convictions, or the general prior conduct of an offender, may be a relevant consideration. For example, several recent infringement notices for related conduct may justify a decision to charge a member with a Service offence under the DFDA notwithstanding that the latest offence, when viewed in isolation, would not normally warrant such action.

c. **Effect upon morale.** The positive and negative effects upon ADF morale, both generally and in respect of a part of the ADF, may be a relevant consideration.

1.4 Alternatives to charging

Laying charges under the DFDA is only one tool that is available to establish and maintain discipline. In some circumstances, maintenance of discipline will best be achieved by taking administrative action against members in accordance with Defence Instructions, as an alternative to or in conjunction with disciplinary proceedings. Similarly, in respect of minor breaches of discipline, proceedings before a Discipline Officer may be appropriate. The DMP may be asked to advise on matters that can be appropriately dealt with through administrative or Discipline Officer action.

While the DMP may make such recommendations, ultimate decisions in respect of how these breaches are dealt with still rests with commanders, who in turn apply judgement to the unique facts and circumstances of the case before them. Nevertheless, administrative or Discipline Officer action alone is inappropriate to deal with situations in which a serious breach of discipline has occurred or where the conduct involved is otherwise deemed to be serious enough to warrant the laying of charges under the DFDA. Further, in some cases the interests of justice may require that a matter be resolved publicly by proceedings under the DFDA before a Defence Force magistrate, restricted court martial or general court martial.

Alternatives to charging should never be used as a means of avoiding charges in situations in which formal disciplinary action is appropriate.

1.5 Discretionary factors

Having determined there is sufficient reliable and admissible evidence for a reasonable prospect of conviction there are

numerous discretionary factors which are relevant in deciding whether to commence (or continue with) a prosecution under the DFDA. In particular, the following is a non-exhaustive list of factors that DMP may consider in deciding, in a given case, whether charges under the DFDA should be preferred or proceeded with:

a. **Consistency and fairness.** The decision to prosecute should be exercised consistently and fairly with similar cases being dealt with in a similar way. However, it must always be recognised that no two cases are identical and there is always a requirement to consider the unique circumstances and facts of each case before deciding whether to prosecute.

b. **Deterrence.** In appropriate cases, such as where a specific offence has become prevalent or where there is a requirement to reinforce standards, regard may be paid to the need to send a message of deterrence, both to the alleged offender and the ADF generally.

c. **Seriousness of the offence.** It will always be relevant to consider the seriousness of the alleged offence. A decision not to charge under the DFDA may be justified in circumstances in which a technical and/or trivial breach of the DFDA has been committed (provided of course that no significant impact upon discipline will result from a decision not to proceed). In these circumstances, administrative action or Discipline Officer proceedings may be a more appropriate mechanism for dealing with the matter. In contrast and as a general rule, the more serious and wilful the alleged conduct giving rise to a service offence, the more appropriate it will be to prefer charges under the DFDA.

d. **Interests of the complainant.** In respect of offences against the person of another, the effect upon that other person of proceeding or not proceeding with a charge will always be a relevant consideration. Similarly, in appropriate cases regard may need to be paid to the wishes of the other person in deciding whether charges should be laid, although such considerations are not determinative.

e. **Nature of the offender.** The age, intelligence, physical or mental health, cooperativeness and level of service experience of the alleged offender may be relevant considerations. For example, in situations where an accused is about to be discharged from the ADF for mental health reasons, the issues of deterrence and maintenance of discipline would carry less weight in the decision to prosecute

f. **Degree of culpability.** Occasionally an incident, such as some accidents, will be caused by the combined actions of many people and cannot be directly attributed to the conduct of one or more persons. In these circumstances, careful regard must be paid to the degree of culpability of the individuals involved when deciding whether charges should be laid and against whom.

g. **Delay in dealing with matters.** Occasionally, conduct giving rise to possible service offences will not be detected for some time. Where service offences are not statute barred under the DFDA, it may nevertheless be relevant to consider whether the length of time since the alleged offence was committed militates against charges being laid. In considering this aspect, the sufficiency of the evidence, the discipline purposes to be served in proceeding with charges and any potential

deterioration in the ability to accord an accused person a fair trial are likely to be particularly relevant.

h. **The member's discharge from the ADF.** Once a member has discharged from the ADF, charges must be preferred within 6 months, and only if the offence carries a maximum penalty of more than 2 years civil imprisonment. In relation to serious matters, consideration will be given to referring the matter to civil authorities for prosecution.

Defending Officers may make written representations to the DMP about discretionary factors to be considered and also the extent to which proceedings can reasonably be regarded as substantially serving the purpose of maintaining or enforcing service discipline although if circumstances have not changed markedly since the original prosecution decision was made, or they refer only to matters that have already been considered, it is unlikely to result in a change of decision.

1.6 Discontinuing a prosecution

Generally the considerations relevant to the decision to prosecute set out above will also be relevant to the decision to discontinue a prosecution. The final decision as to whether a prosecution proceeds rests with the DMP. However, wherever practicable, the views of the service police (or other referring agency) and the views of the complainant will be sought and taken into account in making that decision.

Of course, the extent of that consultation will depend on the circumstances of the case in question, and in particular on the reasons why the DMP is contemplating discontinuing the prosecution. It will be for the DMP to decide on the sufficiency of evidence. On the other hand, if discontinuance on service interest grounds is contemplated, the views of the service police or other referring agency, and the views of the complainant will have greater relevance.

2. FACTORS THAT ARE NOT TO INFLENCE THE DECISION TO PROSECUTE

Although not exhaustive, the following factors are **never** considered when exercising the discretion to prosecute or proceed with charges under the DFDA:

a. The race, religion, sex, sexual preference, marital status, national origin, political associations, activities or beliefs, or Service of the alleged offender or any other person involved.

b. Personal feelings concerning the offender or any other person involved.

c. Possible personal advantage or disadvantage that may result from the prosecution of a person.

d. The possible effect of any decision upon the Service career of the person exercising the discretion to prosecute.

e. Any purported direction from higher authority in respect of a specific case, whether implicit, explicit or by way of inducement or threat.

f. Possible embarrassment or adverse publicity to a command, a unit or formation, the wider ADF or Government.

g. In relation to members of the Permanent Navy, Australian Regular Army or Permanent Air Force, or members of the Reserve rendering continuous full time service, the availability (or otherwise) of victims of crime compensation in the State or Territory where the alleged offending occurred.

Finally, no person has a ‘right’ to be tried under the DFDA. Accordingly, a request by a member that he or she be tried in order to ‘clear his or her name’, is not a relevant consideration in deciding whether charges under the DFDA should be laid or proceeded with.

3. CHOICE OF CHARGES

In many cases the evidence will disclose conduct which constitutes an offence against several different laws. Care must be taken to choose charges which adequately reflect the nature and extent of the offending conduct disclosed by the evidence and which will enable the court to impose a sentence commensurate with the gravity of the conduct. It will not normally be appropriate to charge a person with a number of offences in respect of the one act but in some circumstances it may be necessary to lay charges in the alternative.
The charges laid will usually be the most serious available on the evidence. However, it is necessary to make an overall appraisal of such factors as the strength of the evidence, the probable lines of defence to a particular charge and whether or not trial on indictment is the only means of disposal. Such an appraisal may sometimes lead to the conclusion that it would be appropriate to proceed with some other charge or charges.

The provisions of the DFDA must be relied upon in preference to the use of territory offences from the provisions of the *Crimes Act 1914, Crimes Act 1900* or the *Criminal Codes* unless such a course would not adequately reflect the gravity of the conduct disclosed by the evidence. Territory offences are limited in their application to ADF members by ordinary rules of statutory interpretation. In particular, where any allegedly offending conduct of an ADF member is covered by both a territory offence and an offence under the DFDA, the general provision in a statute yields to the specific provision. This was confirmed by the Full Court of the Federal Court of Australia in *Hoffman v Chief of Army* (2004) 137 FCR 520. The case provides that the question of whether a general territory offence will be excluded by a specific non-territory offence, or vice versa, is to be determined on a case-by-case basis, having regard to the purposes of the provisions under consideration, and the differences between the elements and seriousness of the offences.

Under no circumstances should charges be laid with the intention of providing scope for subsequent charge negotiation.

4. MODE OF TRIAL

The DMP may deem it appropriate to have regard to the following additional factors when deciding which service tribunal should deal with specific charges:

a. **Sentencing options.** The adequacy of the sentencing powers that are available at the various levels of service tribunal will always be an important consideration in deciding by which service tribunal charges should be tried.

b. **Cost.** For service offences or breaches of discipline, cost may be a relevant consideration in deciding what level of service tribunal should be used.

c. **Discretion to decide that an offence be tried by Defence Force magistrate, restricted court martial or general court martial.** Sections 103(1)(c) & (d) of the DFDA provide the DMP with the discretion to decide that an offence be tried by a Defence Force magistrate (DFM), a restricted court martial (RCM) or a general court martial (GCM). In making such a determination, and in addition to a careful consideration of the individual circumstances of the alleged offence(s) in the Brief of Evidence, the DMP may consider:

(1) the objective seriousness of the alleged offence(s);

(2) whether like charges would ordinarily be tried in the absence of a jury in the civilian courts in Australia;

(3) whether the nature of the alleged conduct has a particular service context that relates to the performance of duty and may be best

considered by a number of officers with general service experience;

(4) whether the scale of punishment available would enable the accused person, if convicted, to be appropriately punished;

(5) the prior convictions of the alleged offender

d. **Victims compensation schemes.** In relation to members of the Reserve forces and civilians who are alleged victims of violent offences, the availability of civilian victims of crime compensation may be a relevant consideration in determining whether the matter is prosecuted under the DFDA or referred to a civilian prosecution authority for disposal.

5. DELAY

Avoiding unnecessary delay in bringing matters to trial is a fundamental obligation of prosecutors. Accordingly all prosecutors should:

a. prepare a brief for the DMP with a proposed course of action for the disposal of the matter promptly;

b. when recommending prosecution, draft charges for approval of the DMP and arrange for delivery of the charge documentation to the accused as soon as possible;

c. balance requests for further investigation of the matter with the need to bring the matter to trial in a timely fashion; and

d. remain in contact with witnesses and ascertain their availability for attendance at trial as soon as practical.

6. SEXUAL MISCONDUCT PREVENTION AND RESPONSE OFFICE

The Sexual Misconduct Prevention and Response Office (SeMPRO) was established on 23 July 2013. SeMPRO is focused on providing support, advice and guidance to ADF members who have been affected by sexual misconduct. SeMPRO also provides advice and guidance to commanders and managers of persons affected by sexual misconduct to assist them in appropriately managing the reported incident.

Although there is no formal operational relationship between the office of the DMP, and SeMPRO there is a clear benefit in ensuring that the office of the DMP supports SeMPRO objectives.

To that end, the staff of the office of the DMP may assist SEMPRO in dealing with matters of alleged sexual misconduct, regardless of the decision to lay charges or not. This includes:

a. **informing** victims of the role and availability of SeMPRO in order to invite any victim to report the instance of alleged sexual misconduct to SeMPRO to assist SeMPRO with its reporting, prevalence and trend analysis functions,

b. **liaising** (if the victim consents to that liaison) with SeMPRO staff to assist them in ensuring that victims of sexual misconduct are kept informed throughout the prosecution process and fully supported by SeMPRO staff during the prosecution process; and

c. **reporting** (in accordance with the privacy laws) instances of alleged sexual misconduct (even when not ultimately prosecuted) and the results of trials involving alleged sexual misconduct to assist SeMPRO to identify causative or contributory factors and in its education and reporting functions.

7. DISCLOSURE

It is an important part of the ADF disciplinary system that prosecutions be conducted fairly, transparently, and according to the highest ethical standards. It is a long standing tenet of the Australian criminal justice system that an accused person is entitled to know the case that is to be made against him or her, so that the accused person is able to properly defend the charges. An accused person is entitled to know the evidence that is to be brought in support of the charges as part of the prosecution case, and also whether there is any other material which may be relevant to the defence of the charges. This right imposes an obligation of 'disclosure' on the prosecution.

7.1 What is 'disclosure'?

'Disclosure' requires the prosecution to inform the accused of:

a. the prosecution's case against him/her;
b. any information in realtion to the credibility or reliability of the prosecution witnesses; and
c. any unused material

The obligation is a continuing one (even during the appeal process) requiring the prosecution to make full disclosure to the accused in a timely manner of all material known to the prosecution which can be seen on a sensible appraisal by the prosecution:

a. to be relevant or possibly relevant to an issue in the case;
b. to raise or possibly raise a new issue whose existence is not apparent from the evidence the prosecution proposes to use; or
c. to hold out a real as opposed to fanciful prospect of providing a lead to evidence which goes to either of the previous two matters.

The prosecution will disclose to the accused all material it possesses which is relevant to the charge(s) against the accused which has been gathered in the course of the investigation (or during the proofing of witnesses) and which:

a. the prosecution does not intend to rely on as part of its case, and
b. either is exculpatory or runs counter to the prosecution case (i.e. points away from the accused having committed the offence) or might reasonably be expected to assist the accused in advancing a defence, including material which is in the possession of a third party.

The prosecution duty of disclosure does not extend to disclosing material:

a. relevant only to the credibility of defence (as distinct from prosecution) witnesses;
b. relevant only to the credibility of the accused;
c. relevant only because it might deter an accused from giving false evidence or raising an issue of fact which might be shown to be false; or
d. for the purpose of preventing an accused from creating a forensic disadvantage for himself or herself, if at the time the prosecution became aware of the material, it was not seen as relevant to an issue in the case or otherwise disclosable.

The duty on the prosecution to disclose material to the accused imposes a concomitant obligation on the service police / investigators to notify the prosecution of the existence of all other documentation, material and other information, including that which concerns any proposed witnesses, which might be of relevance to either the prosecution or the defence. If required, in addition to providing the brief of evidence, the service police / investigators shall certify that the prosecution has been notified

of the existence of all such material. Such material includes statements made by witnesses that have not been signed

Subject to public interest immunity considerations, such material, if assessed as relevant according the criteria identified above, should be disclosed.

Where a prosecutor receives material / information that may possibly be subject to a claim of public interest immunity, the prosecutor should not disclose the material without first consulting with the service police/investigators, and where appropriate, Defence Legal. The purpose of the consultation is to give the service police/investigators the opportunity to make a claim of immunity if they consider it appropriate.

The prosecution must not disclose counselling files relating to complainants in sexual offence proceedings , unless the court otherwise orders. In this regard it is relevant to note the provisions of Division 4.5 of the *Evidence (Miscellaneous Provisions) Act 1991* relating to protected confidence material.

7.2 Unused material

"Unused material" is all information relevant to the charge/s against the accused which has been gathered in the course of the investigation and which the prosecution does not intend to rely on as part of its case, and either runs counter to the prosecution case (ie. points away from the accused having committed the alleged offence(s)) or might reasonably be expected to assist the accused in advancing a defence, including material which is in the possession of a third party (ie. a person or body other than the investigation agency or the prosecution).

The prosecution should disclose to the defence all unused material in its possession unless:

a. it is considered that the material is immune from disclosure on public interest grounds;

b. disclosure of the material is precluded by statute, or

c. it is considered that legal professional privilege should be claimed in respect of the material.

Where disclosure is withheld on public interest grounds the defence is to be informed of this and the basis of the claim in general terms (for example that it would disclose the identity of an informant or the location of a premises used for surveillance) unless to do so would in effect reveal that which it would not be in the public interest to reveal.

In some instances it may be appropriate to delay rather than withhold disclosure, for example if disclosure would prejudice ongoing investigations. Disclosure could be delayed until after the investigations are complete.

Legal professional privilege will ordinarily be claimed against the production of any document in the nature of an internal DPP advice or opinion. Legal professional privilege will not be claimed in respect of any record of a statement by a witness that is inconsistent with that witness's previous statement or adds to it significantly, including any statement made in conference, provided the disclosure of such records serves a legitimate forensic purpose.

The requirement to disclose unused material continues throughout a prosecution. If the prosecution becomes aware of the existence of unused material during the course of a prosecution which has not been disclosed, that material should be disclosed as soon as reasonably possible.

Where feasible the accused should be provided with copies of the unused material. If this is not feasible (for example because of the bulk of the material) the accused should be provided with a schedule listing the unused material, with a description making clear the nature of that material, at the time the brief of

evidence is served. The defence should then be informed that arrangements may be made to inspect the material.

If the prosecution has a statement from a person who can give material evidence but who will not be called because they are not credible, the defence should be provided with the name and address of the person and, ordinarily, a copy of the statement.

Where the prosecution is aware that material which runs counter to the prosecution case or might reasonably be expected to assist the accused is in the possession of a third party, the defence should be informed of:

a. the name of the third party;

b. the nature of the material; and

c. the address of the third party (unless there is good reason for not doing so and if so, it may be necessary for the prosecutor to facilitate communication between the defence and the third party.)

There may be cases where, having regard to:

a. the absence of information available to the prosecutor as to the lines of defence to be pursued, and/or

b. the nature, extent or complexity of the material gathered in the course of the investigation,

there will be difficulty in accurately assessing whether particular material satisfies the description of unused material. In these cases, after consultation with the relevant investigating agency, the prosecutor may permit the defence to inspect such material.

7.3 Disclosure affecting credibility and/or reliability of a prosecution witness

The prosecution is also under a duty to disclose to the accused information in its possession which is relevant to the credibility or reliability of a prosecution witness, for example:

a. a relevant previous conviction or finding of guilt;
b. a statement made by a witness, whether signed or unsigned, which is inconsistent with any prior statement of the witness;
c. a relevant adverse finding in other criminal proceedings or in non-criminal proceedings;
d. any physical or mental condition which may affect reliability;
e. any concession which has been granted to the witness in order to secure the witness's testimony for the prosecution.

Previous convictions

It is not possible for the service police to conduct criminal checks for all prosecution witnesses. Prosecutors should only request a criminal history check for a prosecution witness where there is reason to believe that the credibility of the prosecution witness may be in issue.

While the duty to disclose to the accused the previous convictions of a prosecution witness extends only to relevant prior convictions, a prior conviction recorded against a prosecution witness should be disclosed unless the prosecutor is satisfied that the conviction could not reasonably be seen to affect credibility having regard to the nature of, and anticipated issues in, the case. In that regard, previous convictions for offences involving dishonesty should always be disclosed.

The accused may request that the prosecution provide details of any criminal convictions recorded against a prosecution witness. Such a request should be complied with where the prosecutor is

satisfied that the defence has a legitimate forensic purpose for obtaining this information, such as where there is a reason to know or suspect that a witness has prior convictions.

8. CHARGE NEGOTIATION

Charge-negotiation involves communications between an accused person via his/her defending officer and the DMP in relation to charges to be proceeded with. Such negotiations may result in the accused person pleading guilty to fewer than all of the charges he/she is facing, or to a lesser charge or charges, with the remaining charges either not being proceeded with or taken into account without proceeding to conviction.

The DMP is the sole authority to accept or negotiate offers made by an accused person who is to be tried by a DFM, RCM or GCM. A legal officer who prosecutes on DMP's behalf must seek DMP's instructions prior to accepting an offer made in these charge-negotiations.

Charge-negotiations are to be distinguished from consultations with a service tribunal as to the punishment the service tribunal would be likely to impose in the event of the accused pleading guilty to a service offence. No legal officer prosecuting on behalf of the DMP is to participate in such a consultation.

Nevertheless, arrangements as to charge or charges and plea can be consistent with the requirements of justice subject to the following constraints:

a. any charge-negotiation proposal must not be initiated by the prosecution; and

b. such a proposal should not be entertained by the prosecution unless:

    (1) the charges to be proceeded with bear a reasonable relationship to the nature of the misconduct of the accused;

(2) those charges provide an adequate basis for an appropriate sentence in all the circumstances of the case; and

(3) there is evidence to support the charges.

Any decision by DMP whether or not to agree to a proposal advanced by the accused person, or to put a counter-proposal to the accused person, will take into account all the circumstances of the case and other relevant considerations, including:

a. whether the accused person is willing to cooperate in the investigation or prosecution of others, or the extent to which the accused person has done so;

b. whether the sentence that is likely to be imposed if the charges are varied as proposed (taking into account such matters as whether the accused is already serving a term of imprisonment) would be appropriate for the misconduct involved;

c. the desirability of prompt and certain dispatch of the case;

d. the accused person's antecedent conduct;

e. the strength of the prosecution case;

f. the likelihood of adverse consequences to witnesses;

g. in cases where there has been a financial loss to the Commonwealth or any person, whether the accused person has made restitution or reparation or arrangements for either;

h. the need to avoid delay in the dispatch of other pending cases;

i. the time and expense involved in a trial and any appeal proceedings; and

j. the views of the victim(s) and/or complainant(s), where this is reasonably practicable to obtain.

The proposed charge(s) should be discussed with any complainant(s) and where appropriate an explanation of the rationale for an acceptance of the plea ought to be explained. The views of the complainant will be relevant and need to be weighed by the decision maker but are not binding on the DMP.

In no circumstances will the DMP entertain charge-negotiation proposals initiated by the defending officer if the accused person maintains his or her innocence with respect to a charge or charges to which the accused person has offered to plead guilty.

A proposal by the Defending Officer that a plea of guilty be accepted to a lesser number of charges or a lesser charge or charges may include a request that the proposed charges be dealt with summarily, for example before a Commanding Officer.

A proposal by the Defending Officer that a plea of guilty be accepted to a lesser number of charges or to a lesser charge or charges may include a request that the prosecution not oppose a submission to the court during sentencing that the particular penalty falls within a nominated range. Alternatively, the Defending Officer may indicate that the accused will plead guilty to a statutory or pleaded alternative to the existing charge. DMP may agree to such a request provided the penalty or range of sentence nominated is considered to be within the acceptable limits of an exercise of proper sentencing discretion.

9. IMMUNITIES (UNDERTAKINGS OF DMP)

Section 188GD vests DMP with the power to give an undertaking to a person that they will not be prosecuted for a service offence in relation to assistance provided to investigators. Essentially, this provision is aimed at securing the assistance of a co-accused or accomplice in circumstances where the disciplinary efficacy of bolstering the prosecution case against the primary accused outweighs the forfeiture of the opportunity to prosecute the person to whom the undertaking is given. The preference is always that a co-accused person willing to assist in the prosecution of another plead guilty and thereafter receive a reduction to their sentence based upon the degree of their cooperation. Such an approach may not always be practicable, however.

In determining whether to grant an undertaking, DMP will consider the following factors.

a. The extent to which the person was involved in the activity giving rise to the charges, compared with the culpability of their accomplice.

b. The strength of the prosecution case against a person in the absence of the evidence arising from the undertaking.

c. The extent to which the testimony of the person receiving the undertaking will bolster the prosecution case, including the weight the trier of fact is likely to attach to such evidence.

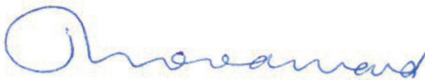
d. The likelihood of the prosecution case being supported by means other than evidence from the person given the undertaking.

e. Whether the public interest is to be served by not proceeding with available charges against the person receiving the undertaking.

Details of any undertaking, or of any concession in relation to the selection of charges in light of cooperation with the prosecution, must be disclosed to the service tribunal and to the accused through their Defending Officer.

10. OFFENCES OCCURRING AND/OR PROSECUTED OVERSEAS

In respect of service offences committed or intended to be prosecuted overseas, additional considerations apply. Although jurisdiction under Australian domestic criminal law will rarely exist in such cases, the nation within whose territory an alleged offence has been committed may have a claim to jurisdiction. In such cases a potential conflict of jurisdiction between the DFDA and the foreign nation's criminal law may arise. In most cases jurisdictional disputes between foreign nations and the ADF will be resolved by reference to foreign visiting forces legislation or Status of Forces Agreements or other similar arrangements.



J.A. WOODWARD CSC
Brigadier
Director of Military Prosecutions

26 October 2015

ANNEX B to
DMP REPORT 01 JAN 15 TO 31 DEC 15

CLASS OF OFFENCE BY SERVICE - 2015

Class of Offence	**NAVY**	**ARMY**	**RAAF**	**TOTAL**
01 – HOMICIDE AND RELATED OFFENCES				
02 – ACTS INTENDED TO CAUSE INJURY	8	10	4	22
03 – SEXUAL ASSAULT AND RELATED OFFENCES	1	5	4	10
04 – DANGEROUS OR NEGLIGENT ACTS ENDANGERING PERSONS		4		4
05 – ABDUCTION, HARASSMENT AND OTHER OFFENCES AGAINST THE PERSON				
06 – ROBBERY, EXTORTION AND RELATED OFFENCES				
07 – UNLAWFUL ENTRY WITH INTENT/BURGLARY, BREAK AND ENTER		1		1
08 – THEFT AND RELATED OFFENCES	1	1		2
09 – FRAUD, DECEPTION AND RELATED OFFENCES	13	20	7	40
10 – ILLICIT DRUG OFFENCES				
11 – PROHIBITED AND REGULATED WEAPONS AND EXPLOSIVES OFFENCES		2		2
12 – PROPERTY DAMAGE AND ENVIRONMENTAL POLLUTION				
13 – PUBLIC ORDER OFFENCES				
14 – TRAFFIC AND VEHICLE REGULATORY OFFENCES				
15 - OFFENCES AGAINST JUSTICE PROCEDURES, GOVERNMENT SECURITY AND GOVERNMENT OPERATIONS		2	1	3
16 – MISCELLANEOUS CIVILIAN OFFENCES	3	1	1	5
17 – SPECIFIC MILITARY DISCIPLINE OFFENCES	16	23	5	44
Grand Total	**42**	**69**	**22**	**133**